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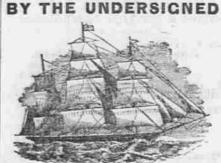
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HAWAIIANGAZETTE

AN INDEPENDENT JOURNAL, DEVOTED TO HAWAHAN PROGRESS.

Supreme Court of the Hawaiian Islands In Admiralty.

R. B. AVERY ET AL. vs. STEAMSHIP "CYPHRENES,"

This is a libel in rem. sgainst the British Steamship Cyphrenes for damages caused by collision with the British ship Ravenstondale, owned by the libeliants. The steamer is a passenger and anchor in the harbor of Honolalu, and that the Steamer in the daytime, on her passage to her plained of, and the question is, whether the Steam-It is contended on the part of the respondent

that as the Steamer was under the charge of a remains more than five hundred feet of clear Pilot-if the collision was caused by the neglect or mistake of the Pilot, that the owners of the Cyphrenes are not liable according to the general principles of the maritime law, or by express statute. In the case of the Neptune the Second, which was decided two years after the passage of the statute of 52 George III., which contained a provision that the owner, or master, of any ship shall not be answerable for any loss or damage occasioned by the neglect, incompetency or incapacity of any licensed pilot. Sir William Scott did not advert to the statute in giving his opinion, but said, if the mere fact of having a pilot on board, and acting in obedience to his directions, would discharge the owners from responsibility, I am of opinion that they should be excased in the present case. I think it is sufficiently established in proof that the master acted throughout in conformity to the directions of the pilot. But this I conceive is not the true rule of law. The parties who suffer are entitled to have their remedy against the vessel that occasioned the damage, and are not under the necessity of looking to the

In the case of the Givolamo, 8 English Admiralty Reports.169, the Court ruled that a foreign ship, though in charge of a licensed pilot, is liable for the full amount of damages arising from a colliston for which she alone was to blame, notwith-standing the stat. 1 and 2. George IV. e 75, and 6 George IV. c 125, which do not extend to pro-ceedings in this Court. The Instance Court of Admiralty is guided by the principles of international and not by those of the municipal law. There were several British pilot acts passed in the wigns of George III. and George IV., and also All of them contain a provision to the effect, that the owner or master of any ship shall not be answerable for any loss or damage occasioned by the neglect, default, incompetency, or incapacity of any licensed pilot. The Court say, in the same case, that it cannot be doubted that before the same case, that it cannot be doubted that before the same case, that it cannot be doubted that before the same case, that it cannot be doubted that before the same case, that it cannot be doubted that before the same case, that it cannot be doubted that before the same case, that it cannot be doubted that before the same case, that it is immaterial in view of the circumstances of this case whether the fault was with the pilot, or the steamer, for in either case it would not be a defence to this same case, that it cannot be doubted that before any order to the circumstances of this case whether the fault was with the pilot, or the steamer, for in either case it would not be a defence to this same case, that it cannot be doubted that before the circumstances of this case whether the fault was with the pilot, or the steamer, for in either case it would not be a defence to this same case, that it cannot be doubted that before the circumstances of this case whether the fault was with the pilot, or the steamer, for in either case it would not be a defence to this same case, that it cannot be added to the circumstances of this case whether the fault was with the pilot, or the steamer, for in either case it would not be a defence to this same case, that it cannot be constituted to the control of the court of the case of the court of the and owners where a licensed pilot is in charge of vessel, that remedy existed in this Court, and the Legislature has not in express terms taken it away." The vessel was held liable, although in charge of a licensed pilot at the time of the collision. There were several other cases involving the same facts and principles and were decided in the same way by the same judge. So the English law stood until the decision of Dr. Lushington in the case of the Protector. The cases referred to above were overruled by him and held the true rule to be, that the statute took away

This steamer, a foreign vessel, was bound from flying jib booms. the port of New York, and being in pilot waters, and in charge of a licensed pilot of that port, ran into a vessel of the United States and sunk her. The collision, as the Court say, was occasioned by the gross fault of the licensed pilot then in charge of the vessel. The Court decided that under the statute of New York, vessels were compelled to management) that the responsibility of the ves-sel for torts committed by it not being derived from the law of master and servant, or from the \$100." common law at all, but from maritime law, which impressed a maritime lien upon the vessel in whomsoever hands it might be for torts committed by it, the fact that the statute thus compelled the master to take the pilot, did not exonerate the vessel from liability to respond for torts done by

it, as, ex. gr., for a collision, though the result only of the pilot's negligence."

Mr. Justice Warepays in his 2d volume (89, The Buntress) of reports that "a Court of Admiralty is a Court of the law of Nations and derives in part its jurisdiction from that law. The maritime law in its general principles, as applicable to shipping has or naw, and has become so fully recognized by the commercial world, that no Coart can with propriety depart from its principles and practice, unless by special net of legislation. In England the maritime law has been superseded by an act of Parliament as to the liabilities of owners of pressels in successful in their its pressels in successful in the countries of the effect, that he was able to do the work and had a conversation with the Captain about it, who told him that it must go to the from Works, and Chayter further says that he could have done the work for something its pressels in the countries. upon the ground that the general admiralty laws tion of either provision.

The Counsel for the respondents contend

the owners of vessels are exonerated from liability in case of collision. In the case of Yates et al., vs. Brown et al. 8 Peck, 23. The facts in this case are very similar to the case at bar, and the question reserved for the whole Court was, whether, there being a person duly authorized to pilot the vessel, the owners of the vessel were liable for an injury arising from negligence or mismanagement in navigating the vessel out of the herbor. Parker, C. J. 10 giving the decision of the Court, says, that the ligence of anyone on board, injures another ves-sel by running foul of her, is liable to the injured

party, although there be a pilot on board who has the entire control and management of the vessel. The same principle is recognized in 160, 161.

quire clear and explicit enactments by the Legis-lature before it would be justified by the maritime law to change its principles and alter the ordinary rules of judicial construction. To displace a lien, tions as well as to limit the rights of the partie njured to the individual pilot, cannot be inferred om such a statute although the pilot is answerable like other persons for any harm he may do, by negligence or default. It would be a summary mode of defeating the great principles of Admi-ralty jarisprodence, which no power can do, ex-cept a Parliament or Legislature, and that in ex-

lish Merchant and Shipping Act, that no owner or master of any ship shall be answerable for any damage occasioned by the fault of the pilot, when the employment of the pilot is compalary. Had the same principle of responsibility been recognized prior to the statute, it probably would not the statute, it probably would not the statute, it probably would not that a decree should be entered for the libellants be paid by the Cyphreses, but after the demorrance being the time water angulaged that a decree should be entered for the libellants be paid by the Cyphreses, but after the demorrance being the time water angulaged that a decree should be entered for the libellants be paid by the Cyphreses, but after the demorrance being the prior to the fault amount of the damages actually sustained.

From this judgment an appeal was taken to the full Court.

Having heard the arguments of Coursel and was done by them that it is not the ordinary and

against this position.

The Statutes of New York and Massachusetts contain similar provisions to our own, and the Courts have not considered them as affecting the

also be answerable to the party injured for the act of the Pilot, as being the act of his agent.

It is contended on the next of the It is contended on the part of the respondents

The construction that we have placed upon that the Ravenstondale was solely to blame, as she this statute is, that the words, "in all cases," in

vessel and he says that " I regard the Bavenston-Steamer in the daytime, on her passage to her dale to be in a perfectly safe position." He adds which she arrives, and is requested by the Harberth at the wharf in said harbor, collided with that when the Ravenstondale first arrived "we bor Master to rig in her booms, &c. she must do the Ravens tondale and caused the damage com- put her along side the wharf to get iron out, that the ship might be repaired and then we dropped ter she has got alongside the wharf. But the her off." He says, that she occupied a little request of the Harbor Muster is always necessaover one third of the channel, that she is 295 feet ry, in order to impose upon the vessel the obli-

It is a well established maritime rule that when

cise great care and diligence.
Culbertson vs. Shaw, 18 Howard, 584, 587,
Ward va. Schr. Darisman, 6 McLean C. C. 239,
steamer, If a ship at anchor and one in motion come in ollision, the presumption is, that it is the fault of

But whether she be in a proper place or not, and be properly anchored or not, the other vessel having the must avoid her if it be practicable, and consistent ure. in a char with her own safety.

Per Dr. Lushington in the case of the Batavia.

have avoided the ship, as the United Sates frigate Pensacola had done in passing through the same portion of the harbor prior to the collision and by the steamer Mikado subsequently. It will be borne in mind that the steamer entered the harbor in the day time, in good weather and the ship which was in fall view, occupied but a little more than one third of its width. But the pilot proband are not under the necessity of looking to the pilot, from whom redress is not always to be had the steamer's wharf, relying upon the steamer to answer his orders promptly. He attributes the accident to the bad steering of the steamer, and he adds also, that had she backed in time, and had the anchor gone down, and the jib been buisted as ordered, the accident would not have happened. But the Muster of the steamer attributes the accident to the jib boom of the ship being rigged out, and to save the jib boom by a reversal of the

engine the accident occurred. There is most contradictory evidence in relation to the management and action of the steamer immediately before the collision; but I do not regard it necessary for the purposes of this investigation to analyse it, and to give an opinio the Shipping Act of the 17th and 18th Victoria. vestigation to analyse it, and to give an opinion All of them contain a provision to the effect, that these statutes were passed exonerating masters and not by indirection, give an opinion affecting the rights of others, which have not been repre-

sented. There is no pretence that the injury occurred by inevitable accident, and it is very evident that it was not necessary for the steamer to be in

such dangerous proximity to the ship.

Mr. Justice Clifford said in the case of Wakefield et al. vs. stenmer Governor, 1 Vol. Clifford's struction to the navigation, it is clearly a case, where the rule applies, that a saiting vessel shall keep her course, and leave it to the steamer to adopt the navigation to the steamer to

spritsail yards, and top their lower and topsail yards, within 24 hours after anchoring in such port; and in all cases before attempting to come take a pilot. But held further, 7 Wallace 53 alongside of, or make fast to either of the docks (the statute containing no clause exempting the or wharves, and keep them so rigged in and top-(the statute containing no clause exempting the vessel or owners from liability for the Pilot's misbor and until after removing from any wharf or

It is not incombent on vessels, unless requested by the Harbor Master to rig in their jib booms —and it is not pretended that any such request

But it is contended, that while a request is necessury for vessels on entering the harbor, it is not made imperative by the last clause of the Section, in which it says, " that in all cases before attempting to come alongside of or make fast to course.

vessels in cases of collision, but no such enact- bor, and it makes it imperative to keep them so he would like to do the job and the charge now ment has been made by the Legislature of this rigged in and topped until 24 hours before leav.

Kingdom, and therefore this case must be deciting the harbor. The penalty applies for a violation witness told the Captain. The Captain told him ded upon the general principles of the maritime tion of law on entering the harbor as well as law, unaffected by statute provisions, and this renders the vessel liable for a collision attributable is an entire section and must be in connection done it for \$1800. to the pilot's mismanagement; and it can only be and from the evidence there has been no viola-

"that Courts of Admiralty in saits between foreigners will decide according to the laws of the country to which the ships belong." This position is repagnant to the general prin-

In the case of Smith et al. vs. Candey, 1 How R. 28, which arose from a collision in the port of Liverpool, between two American wessels, the Court ruled, that the question whether there is a legal liability for the consequences of a collision in an English port, must be determined by the over time. owner of a vessel, which through the fault or neg. laws of England, and that when a collision occurs in a port of a foreign country, the rights and responsibilities of the parties are to be determined according to the laws of that country.

I suppose that courts always regret that foreigners can not be remitted to their domestic forum for the settlement of these distances. I suppose that courts always regret that foreigners can not be remitted to their domestic forum for the settlement of these distances. Abbott on shipping and note to the American foreigners can not be remitted to their domes-edition: Bussy vs. Donaldson, 4 Dotlers. 266. tic forum for the settlement of their difficulties Fletcher vs. Rroddick, 5 Bos. and Pul., 182. The and for the adjudication of their legal rights. bark Lotty, Olcatt's Adm. p. 329.

But it is a duty imposed by international law and as a matter of comity, in cases like the one at large entertain the jurisdiction. Indeed the payment of half pilotage, that it is compulsory and therefore exouerates the owners from responsibility. The statute, judging from its terms, was ed as a neglect of international day and a decidnot passed for such a purpose, and does not involve any such consequences. It was passed of justice, to refuse to entertain it. But when a
merely to sustain the system of pilotage, and for no other purpose whatever. The Court would re- erned by the laws of fine country where the act

complained of took place.

In view of the law and circumstances of the case, I am of opinion that a decree must be en-tered for the libeliants. I regard the true mea-New figure head " 300 00 and defeat a recourse in rem. and thereby release | sure of damages to be the amount fully sustained recognized responsibility or impose new obliga- by the party at the time and place of the lojury.

> Supreme Court of the Hawaiian Islands. IN ADMIRALITY

R. B. AVERY ET AL. vs. STEAMSHIP " CYPHRENES." This case came on for hearing before the It is very true that by section 388 of the Eng- Chief Justice, who, on the 6th Sept. adjudged sh Mcrchant and Shipping Act, that no owner or that a decree should be entered for the libeliants

have been passed, and the English authorities are | considered the same, we are of opinion that the judgment of the Chief Justice should be affirmed; and we adopt his reasons with this modifica-

The section 608 of the Civil Code, reads as Courts have not considered them as affecting the rights of parties in any other respect than the payment of the pilotage.

Chancellor Kent in his 3rd vol. Com. 238, says, that the Pilot while on board has the exclusive control of the ship. He is considered as Master pro has vice, and if injury is sustained in the navigation of the vessel, while under the charge of the Pilot, he is answerable as strictly as if he was a common carrier for his default, necligence, or unknillfulness, and the owner would be.

was in an improper place and obstructed the navi- the fourth line, refer to the time, thus, if the vesfreight boat, and is ranning between the British Colonies of Australia and San Francisco. It appears in evidence that the Ravenstondale was at place designated by the Harbor Master in the fourth line, refer to the time, thus, it the vessel on eatering the barbor, comes to anchor and that may enter any port shall be anchored in the is requested by the Harbor Master to rig it. her because that the Ravenstondale was at place and obstructed the navisel on eatering the barbor, comes to anchor and that may enter any port shall be anchored in the is requested by the Harbor Master to rig it. her because the barbor, comes to anchor and that may enter any port shall be anchored in the is requested by the Harbor Master to rig it. the wharf, even though it may be on the day on so at once, and cannot wait for the 24 hours af-

But even if this be not the proper construction of the statute, and if the Ravenstondale was in a vessel is entering a harbor she is bound to exer-cise great care and diligence. In ber jib boom and flying jib boom, though not having been requested so to do by the Harbor Master, it would furnish no delence for the

The only question is, whether the Cyphrenes was in fault, and whether the steamer could have the ship in motion, onless the anchored vessel was where she should not have been.

Strout vs. Foster 1 Haw. 89; The Sciota, whether the ship was obeying in all respects the

When the collision was caused by a vessel having the power to move or stop at her pleasare in a channel of sufficient breadth, without any superior force compelling her to the place of collision. The fact that thest eamer did collide 10 Jur. 19; Knowlton vs. Sandford, 32 Maine with the ship is conclusive evidence that she was not properly managed." (Granite State, 3 Wallace, It cannot be denied that the steamer could 314) more especially when it is shown that the ion occurred in broad daylight and that the ship which was moured to the wharf, could be seen all the way from the entrance of the harbor

and even before entering.

The Court while affirming the judgment of the Chief Justice adopts his reasoning with this slight modification.

ELISHA H. ALLEN, CITAB. C. HARRIS, A. FRANCIS JUDD, A. S. Hartwell, Proctor for Libeliants; E. Preston and E. T. O Halloran, Proctors for Res-

Supreme Court of the Hawaiian Islands. остовии тенм, 1875.

AVERY ET AL. vs. STEAMSHIP " CY-PHRENES."

Honolulu, October 20th 1875.

Having decided that the steamship Cyphrenes s liable for the damage which she caused the Ravenstondale by collision, it remains to ascertain what amount should be paid for such damage. The first claim which we will consider is that

Counsel's fees should be allowed, but it has not een the practice of this Court hitherto, and we see nothing in this case which should induce us to vary from the previous usage of the Court, and therefore decline to allow them. The Iron Works fill is for \$2757.57. It was the duty of the Master of the Ravenstondale or any one who acted for him to procure this work

one at as low a rate as possible, taking into sideration however, the quickness of time. With this view it would have been well to

It may be regarded as settled in England, that if the pilot is alone in fault, the owners are not liable.

The same work.

Keep her course, and leave it to the steamer to adopt the necessary precautions to avoid a collision. The rule applies with more force to a vestel at anchor. the phot is alone in fault, the owners are not hable.

The same question was involved in the case of the steamer China, 7 Wallace 53, which was decided by the Supreme Court of the United States.

The respondent contends further that the libellants can not recover, masmuch as the vessel had cided by the Supreme Court of the United States.

Self. The respondent contends further that the libellants can not recover, masmuch as the vessel had cided by the Supreme Court of the United States. on such jobs as they may have, higher than they By Sec. 608 of the Civil Code it is enacted that "All vessels entering port shall, if so requested by the Harbor Master or any pilot, rig in their jib, flying jib, and spanker booms, and On analyzing their bill by the testimony, man of the charges must appear to any one exceedingly high. Mr. Young, the Manager of the works, in his testimony says, that he suggested to the Captain of the vessel, to put out some of the work, but that the Captain said he wanted it all done at the Works under Mr. Young's eye. Mr. The Harbor Master testified that "he did not direct the jib boom to be rigged in, and did not consider it necessary, and adds, I regard the Ravenstondale as being in perfectly safe positive. time as in the day time, for both machines and men; and that both jobs, meaning thereby, the damage done to the same ship at sea and by the collision were going on at once. All this, clearly shows, that it would have been prudent to have divided the work with other shops. And Mr. Daniel Foster, who has great experience in such

he could not get the work; and he forther tests

done it for \$1800. Mr. Chayter says that if he had sent in un estimate he should have tendered for \$1800. On a review of the account with the Iron Works, and in view of this testimony, we are of opinion that the Cypbrenes should pay \$2000 of the Iron Works account.
With regard to demurrage, if the services of

other mechanics had been employed, the weight of testimony is, that the repairs could have been Mr. Chayter says it could have been done within a month, and the Iron Works could have

done it in three or four weeks without working We are fully aware that rivals in business are apt to take a savorable view of what they theuselves could have done and an unfavorable view of what others have done, but Mr. Foster, who is

I think they (the repairs) could have been completed within 30 days. Notice was given that demorrage would be at

the expense of the Cyphrenes after the 14th September. Making due allowance for the time necessary to procore labor and make bargains, in view of the testimony we adjudge, that the Cy-phrenes should pay for demurrage of the Ravens-tondale at the rate agreed by Counsel \$119.7514

Mr. Emme's bill undisputed Mr. Bolles' bill do 121 60 Bill at the Consulate we regard as a rea-reasoning which we have applied to the demurrage, and therefore we ad-

judge 16 days for wharfage, at 23.50 per day, Harbor Master fee at 89..... The crew, so far as they were employed before the time when demorrage begins to ran should be paid by the Cyphrenes, but after the demorrnsual work of seamen when a ship meets with a Matting, Matting, Matting! disaster, and it does not appear in any way, that the crew either demanded or received any extra wages We regard the Captain's bill as far as the per drem is concerned as reasonable, and allow the

Ravenstondale for the work done by her crew Augt. 24, 25, 6 and 7th., 72.00. On the subject of commissions, the employment of a commission merchant in a foreign either persons or prices is a reasonable and prodent thing; but it is a fixed principle of law, that a person may not be an agent at the same time for persons having opposite interests. Mr. Davies therefore, who was agent for the Iron Works, cannot have commissions for making a bargain for the ship with the Iron Works. It cannot be supposed that he would regard it as his duty to abute the charges of the Iron Works as egainst the ship; all his interests and motives would be the other way, we therefore disallow ommissions on the item for the Iron Works and allow it as follows:

On Surveyor's fees \$ 72 00 Harbor Master's bill Consulate Lloyd's Agency 60 00

At 5 per cent..... 44 78 There is no reason for allowing exchange, the mounts are to be paid here and the hull of the Cyphrenes is bolden for them, and the agents of the Cyphrenes must take their own means of raising the money. But interest should be alowed upon the amount found due for damage done to the Ravenstandale by the Cyphrenes from the day when the amount was ascertainable, which we find to be October 4th, the day when the repairs were completed and the accounts in a condi-tion to be settled, the rate of interest being 9 per cent, the legal interest of this country. The amount which we have adjudged

5389 42 Iron Works 2000 00 Sarveyor's Bill. New Figure Head..... Mr. Bolies' Bill.... Wharfage. Captains' Bill for labor of men..... 44 78 Paris, Eagle 2 and 20, and Clipper Plows,

interest at 9 per cent. to 28th October \$5389 42 ELISHA H. ALLEN, CHAS. C. HARRIS,

Messrs. Preston and O'Halloran for Respond Honolula, Oct. 28th, 1875. B. H. Lyons' Compound

A. S. Hartwell, Esq., Proctor for Libellants.

A. FRANCIS JEDD.

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